



**Meeting Date: June 26, 2017**  
**Agenda Item #: 8e**

**TO: Mayor and Town Council**

**FROM: Hiram J. Marziano, II, Planning Director**

**THRU: Susan Parker, Town Administrator**

**TITLE: Appeal Hearings Request – Palm Cove Flood Violation Appeals**

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In September 2016, Roy McClure of the Federal Emergency Management Agency (FEMA) and Heather Keefer with NC Department of Public Safety, Emergency Management Risk Management Section conducted a Community Assistance Visit (CAV). The CAV is an audit of the Town's practices in the application and enforcement of the Town's adopted Flood Damage Prevention Ordinance and the regulations of the National Flood Insurance Program (NFIP) in which the Town participates.

During this visit, Mr. McClure and Mrs. Keefer discovered violations of these ordinances and regulations at two properties:

- Lot 8 Palm Cove Subdivision – 1844 East Main Street
- Lot 9 Palm Cove Subdivision – 1846 East Main Street

The violations involve electrical and other utility lines attached to and/or penetrating the breakaway walls. This involves both design standards for breakaway walls and free-from-obstruction requirements of the NFIP and the Town's ordinances.

On April 6, 2017, Staff sent violation letters to the property owners giving them thirty (30) days to come into compliance. A submittal from their representative for a proposed solution was received and review by Staff and the State's NFIP coordinators. The proposed solution was found to not be in compliance with regulations. No further solution was received. In May, Staff met with the property owners' representative and they were given an extended period to provide another solution.

Having received nothing from them by the end of this extended period, Staff proceeded with the procedures for violations as laid out in the Flood Damage Prevention Ordinance. This involved Staff sending notification of an on-site hearing, held June 9, 2017, and drafting findings and an order for corrective action, mailed certified and electronically copied to legal counsel for the Town and the property owners on June 13, 2017.

As is their right to do so, the property owners for the two properties have requested an appeal of the order. Each property is a separate case and requires a separate appeal hearing.

Staff is requesting that the Town Council set a hearing for each appeal at their July 18<sup>th</sup> meeting.

Included with this packet is an excerpt from the Flood Damage Prevention Ordinance involving corrective action, each request for appeal, along with the Findings and Order to Correct from the June 9, 2017 hearing, as well as the CAV letter from FEMA dated April 13, 2017.

## ARTICLE 12. ENVIRONMENTAL REGULATIONS

### SECTION 12.03 ADMINISTRATION

#### (D) Corrective Procedures.

(1) **Violations to be Corrected.** When the **Floodplain Administrator** finds **violations** of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the **violation**. The owner or occupant shall immediately remedy each of the **violations** of law cited in such notification.

(2) **Actions in Event of Failure to Take Corrective Action.** If the owner of a building or property shall fail to take prompt corrective action, the **Floodplain Administrator** shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) That the building or property is in **violation** of the **Flood** Damage Prevention Ordinance;

(b) That a hearing will be held before the **Floodplain Administrator** at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

(c) That following the hearing, the **Floodplain Administrator** may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(3) **Order to Take Corrective Action.** If, upon a hearing held pursuant to the notice prescribed above, the **Floodplain Administrator** shall find that the building or **development** is in **violation** of the **Flood** Damage Prevention Ordinance, he/she shall issue an order in writing to the owner, requiring the owner to remedy the **violation** within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days or less. Where the **Floodplain Administrator** finds that there is imminent danger to life or other property, he/she may order that corrective action be taken in such lesser period as may be feasible.

(4) **Appeal.** Any owner who has received an order to take corrective action may **appeal** the order to the local elected governing body by giving notice of **appeal** in writing to the **Floodplain Administrator** and the Town Clerk within ten (10) days following issuance of the final order. In the absence of an **appeal**, the order of the **Floodplain Administrator** shall be final. The local governing body shall hear an **appeal** within a reasonable time and may affirm, modify and affirm, or revoke the order.

(5) **Failure to Comply with Order.** If the owner of a building or property fails to comply with an order to take corrective action for which no **appeal** has been made or fails to comply with an order of the governing body following an **appeal**, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the Court.